Editors' note: Reconsideration denied by Order dated June 11, 1985; Appealed -- aff'd, Civ.No. A85-375 (D.Alaska April 7, 1987)

JOASH TUKLE

IBLA 84-893 Decided March 29, 1985

Appeal from a decision of the Fairbanks, Alaska, District Office, Bureau of Land Management, denying request to amend the land description contained in Native allotment application F-11956.

Affirmed.

1. Alaska: Native Allotments

> Sec. 905(c) of Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(c) (1982), authorizes a Native allotment applicant to amend the description of the land in his application to accurately describe the parcel for which he applied. It does not authorize an applicant to substitute different land.

APPEARANCES: J. Michael Robbins, Esq., Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, for the Bureau of Land Management; Antoinette M. Tadolini, Esq., Anchorage, Alaska, for ARCO Alaska, Inc.; Barbara L. Malchick, Esq., Assistant Attorney General, for the State of Alaska; and Ernest L. Woods, Jr., Chief, Real Estate Division, for the U.S. Army Engineer District, Alaska.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Joash Tukle has appealed from an August 28, 1984, decision of the Fairbanks, Alaska, District Office, Bureau of Land Management (BLM), denying his request to amend Native allotment application F-11956. The decision recited that appellant had filed a Native allotment application and evidence of use and occupancy with the Bureau of Indian Affairs on May 5, 1967. That application described approximately 160 acres of land on a surveyed island in the Colville River Delta. In July 1983, appellant stated that he originally intended to claim lands at Oliktok Point, which lies on the mainland 12 miles distant from the land selected in his original application.

The decision denying Tukle's request to amend his allotment refers to a statement provided by his counsel that appellant was told that he could not select the land at Oliktok Point because the land was the site of a defense station. Although appellant consequently designated other land in his application, appellant asserts that Oliktok Point was the land he originally intended to claim. Although appellant may have contemplated applying for this

land, it was clearly not the land he selected or described in his application, which was the island in the Colville River Delta.

[1] The decision cited section 905(c) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(c) (1982), which governs the Department's authority to allow amendment of a Native allotment application and provides in pertinent part: "An allotment applicant may amend the land description contained in his or her application if said description designates land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed." Appellant's amendment to his application may be considered only if this statutory provision is construed to allow an applicant to substitute a different parcel of land for the one described in his application. Such a construction is foreclosed by the legislative history for this provision, which reads as follows:

> A significant percentage of Alaska Native Allotment applications do not correctly describe the land for which the applicant intended to apply. Technical errors in land description, made either by the applicant or by the Department in computing a metes-and-bounds or survey description from diagrams, are subject to correction under the authority of Section 905(c). In accordance with the Department's existing procedures for the amendment of applications, subsection (c) requires that the amended application describe the land the applicant originally intended to apply for and does not provide authority for the selection of other land. [Emphasis added.]

S. Rep. No. 413, 96th Cong., 1st Sess. 286, reprinted in 1980 U.S. Code Cong. & Ad. News 5230. Thus, it is clear that this provision was intended to enable Native allotment applicants to correct the legal description of the land for which they originally applied. See, e.g., Pedro Bay Corp., 78 IBLA 196 (1984). It does not authorize the substitution of a different parcel of land.

Appellant states that he had used and occupied the parcel during all required periods and alleges that the preparation of a Native allotment application is a duty assumed by the Federal Government which has the highest standard of care and fiduciary duty with respect to Native people. However, these considerations provide no authority for the amendment of a Native allotment application in a manner contrary to the pertinent statute. 1/

1/ We need not determine whether appellant was correctly advised that the dedication of the parcel to these other uses precluded his application for that parcel prior to the repeal of the Native Allotment Act. We note, however, that in Golden Valley Electric Association, 85 IBLA 363 (1985), the Board held that issuance of a right-of-way for an electric transmission line over land to which an Alaska Native had an inchoate right through use and occupancy could not be defeated by a subsequent determination of entitlement to an allotment. Although appellant may have previously used and occupied the land at Oliktok Point, any inchoate right to an allotment for this parcel based on such use and occupancy never vested because there had been no timely application for that parcel. See generally United States v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981).

Protests against amendment of appellant's application were filed by the United States Army, ARCO Alaska, Inc., and the State of Alaska because Tukle's amended application includes not only land used for a defense installation, but also land leased to ARCO for a road and boat dock and land tentatively approved for conveyance to the State of Alaska. On appeal, protestants have expressed their agreement with BLM that applicable statutory authority does not permit Tukle to substitute different land for the parcel for which he originally filed. Protestants also have raised other arguments why the amendment to Tukle's application should not be allowed. Our disposition of this appeal make consideration of these other arguments unnecessary.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge

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fn. 1 (continued)

We also note that even if the advice discouraging appellant's application were incorrect and had been provided by an employee of the Government (a contention not made by appellant), such action would not constitute affirmative misconduct giving rise to an estoppel against the United States. See Schweiker v. Hansen, 450 U.S. 785 (1981).